

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

CIVIL CONTEMPT APPLICATION NO. 166 OF 2002

IN

ORIGINAL APPLICATION NO. 666 OF 1992
ALLAHABAD THIS IS THE 25TH DAY OF August, 2003

HON'BLE MAJ GEN. K.K. SRIVASTAVA, A.M.

HON'BLE MR. A. K. BHATNAGAR, J.M.

Ashok Kumar Pandey,
S/o Sri Dena Nath Pandey,
R/o Village and Post Rajapur,
District-Varanasi U.P.

..... Applicant

(By Advocate Shri Sajnu Ram)

Versus

1. Sri Mathu Jan,
Divisional Railway Manager,
Northern Railway,
Allahabad.
2. Sri Ajay Goyal,
Divisional Superintending Engineer (I)/
Senior DEN, Northern Railway,
Allahabad.
3. Sri Rajiv Ranjan Raju,
Assistant Engineer,
Northern Railway,
Mirzapur.
4. Sri OM Prakash,
Senior Section Engineer,
Northern Railway,
Mirzapur. Response

(By Advocate Shri A.K. Gaur)

O R D E R

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER
This Contempt petition has been filed for wilful
disobedience of our order dated 17th August, 2003 passed

O.A. no.656/92. Our order was challenged before Hon'ble Allahabad High Court by filing writ petition no.5433/01 by respondents and the same was dismissed vide order of Hon'ble High Court dated 11.12.2001 (Annexure A-3). This Tribunal passed the following order:-

"We have perused the letter dated 5.1.1992 intimating the applicant that his services stood dismissed for 3 months unauthorised absence from duty. The order dated 26.2.1988 has not been filed by the parties for our perusal. However, the perusal of this letter clearly indicates that the applicant has been dismissed from his services without taking recourse to the procedure prescribed for the purpose of dismissal of a railway servant. The order obviously is not of termination simplicitor but it is a dismissal for misconduct. The order is therefore illegal, arbitrary and void and deserves to be quashed. We, therefore, find force in the OA which is liable to be allowed. The OA is allowed the order dated 26.2.1988 issued by respondent no.3 and communicated by the DRM Northern Railway Allahabad vide letter dated 5.1.1992 is quashed. Respondents are directed to re-engage the applicant with all consequential benefits within 3 months from the date of communication of this order. No order as to costs."

The time of three months was given to the respondents to comply with the order. However, when ~~the~~ number of representations by the applicant, the respondents did not take any action, the applicant filed contempt petition no.21/01 which was finally disposed of by order dated 30.01.2002 with following observation :-

"Shri Sajnu Ram learned counsel for the applicant, however, submitted that order has not been complied with so far as consequential benefits are concerned. In reply to this learned counsel for the respondents has submitted that in assessing the consequential benefits some time is required and remaining part of the order shall be complied with very soon. In view of the aforesaid statement of counsel for the respondents we do not see any purpose to keep this application pending. The contempt application is disposed of. Notices are discharged."

2. Aggrieved by the action of the respondents the applicant has again filed this contempt petition. Shri S. Ram, learned counsel for the applicant made two-fold submissions as under:-

- i) The applicant has not been paid the arrears inspite of the orders of this Tribunal that the applicant is entitled for consequential benefits including counting of service for seniority and promotion.
- ii) That the pay fixation of the applicant has not been done correctly as the pay of juniors to the applicant has been fixed at Rs.3540/- per month whereas the pay of the applicant has been fixed only at Rs.3280/-. (Para 4 of the Suppl.RA)

3. ^{laying} Shri Sajnu Ram, learned counsel for the applicant laying stress on the expression, 'Consequential benefits' submitted that consequential benefits include counting the service for all purpose including seniority, promotion and backwages. The learned counsel has placed reliance on the order of this Tribunal Hyderabad Bench in the case of Nancharaiana Versus Smt Karuna Pillai (1992) 19 ATC 365. The learned counsel submitted that the Tribunal held in para 9 of the said order that the consequential benefit means an employee's backwages also. The Tribunal also imposed penalty of Rs.1500/- if the backwages were not paid within one month on receipt of the order and also undergo imprisonment of two months.

4. Learned counsel for the applicant further submitted that the Supreme Court in the case of T.R. Dhananjay Versus J. Vasudevan AIR 1996 SC 302 held that if the contemner avoids wilfully the compliance of courts order and does not give consequential benefits flowing from the order, he is deserving for the punishment. Therefore, in the instant case, respondents are liable to be punished for non-compliance of the order of this Tribunal.

5. Opposing the contention of the counsel for the

applicant, Shri A.K. Gaur, learned counsel for the respondents submitted that the order of this Tribunal has been fully complied with. The applicant was reinstated on 10.01.2002 and the arrears of difference of pay for the period from 11.01.2002 to 30.09.2001 amounting to Rs.8120/- have been paid alongwith the salary for the month of October 2002. This fact has not been denied by the applicant.

6. Learned counsel for the respondents further submitted that this Tribunal in CCA no.27/01 (O.A no.301/92) (P.K. Saxena Versus GM NE Railway) decided on 29.08.2001 has clearly observed that consequential benefits do not include payment of arrears. Even in the case of Laxmi Natain Versus A.S.P. Sinha and Another (1994) 28 ATC 610. the Tribunal has held that there was no contempt in not paying back wages as there was no direction for payment of actual monetary benefit.

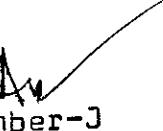
7. The learned counsel for the respondents also submitted that as per Rule 228 of IREM no arrears are to be paid with retrospective effect.

8. We have heard counsel for the parties and have carefully considered their submissions.

9. A short question involved in this case is that whether by not paying the arrears for the intervening period from the date of removal to the date of reinstatement amounts to contempt or not on the part of respondents. In this contempt petition the applicant has also contended that his pay fixation has not been done correctly nor his seniority correctly assigned. In our opinion, these are the questions which ought to be agitated on the original site as the scope of ~~enjoining~~ ^{h. h} is very limited in the contempt jurisdiction.

Besides in our opinion the respondents have implemented the order as understood and interpreted by them, therefore, no case of contempt is made out.

10. For the aforesaid reasons contempt petition is rejected. Notices are discharged. However, liberty is given to the applicant to challenge the action of the respondents on the original side in case he is aggrieved with that.


Member-J


Member-A

/Neelam/